

**15.733 Disqualification of prosecuting attorney -- Appointment of a special prosecutor.**

- (1) For the purposes of this section the following words or phrases shall have the meaning indicated:
  - (a) "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
  - (b) "Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and guardian;
  - (c) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
    1. Ownership in a mutual or common investment fund that holds securities, or a proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, or ownership of government securities is a "financial interest" only if the outcome of the proceeding could substantially affect the value of the interest;
    2. An office in an educational, religious, charitable, fraternal, or civil organization is not a "financial interest" in securities held by the organization.
- (2) Any prosecuting attorney shall disqualify himself in any proceeding in which he or his spouse, or a member of his immediate family either individually or as a fiduciary:
  - (a) Is a party to the proceeding, or an officer, director, or trustee of a party;
  - (b) Is acting as a lawyer in the proceeding;
  - (c) Is known by the prosecuting attorney to have an interest that could be substantially affected by the outcome of the proceeding;
  - (d) Is to the prosecuting attorney's knowledge likely to be a material witness in the proceeding;
  - (e) Has served in private practice or government service, other than as a prosecuting attorney, as a lawyer or rendered a legal opinion in the matter in controversy;
  - (f) Has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.
- (3) Any prosecuting attorney may be disqualified by the court in which the proceeding is presently pending, upon a showing of actual prejudice.
- (4) In the event that a prosecuting attorney is disqualified, he shall certify such fact in writing to the Attorney General who may direct another Commonwealth's attorney or county attorney or an assistant attorney general as a special prosecutor to represent the Commonwealth in that proceeding.

**Effective:** July 1, 1982

**History:** Amended 1982 Ky. Acts ch. 141, sec. 42, effective July 1, 1982. -- Repealed and reenacted 1980 Ky. Acts ch. 188, sec. 10, effective July 15, 1980. -- Created 1976 Ky. Acts ch. 59, sec. 1.

**Formerly codified as** KRS 26A.250.

**Note:** 1980 Ky. Acts ch. 396, sec. 45 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, effective July 1, 1982.